



ROBERT G. (BOB) BETHELL JOINT COMMITTEE
ON HOME AND COMMUNITY BASED SERVICES
AND KANCARE OVERSIGHT

Testimony, November 25, 2013

HCBS & KanCare

Rosie Cooper

KACIL Executive Director

Member Agencies:

**Coalition for
Independence**

Kansas City, KS
913/321-5140 Voice/TT

**Independent Living
Resource Center**

Wichita, KS
316/942-6300 Voice/TT

Independence, Inc.

Lawrence, KS
785/841-0333 Voice
785/841-1046 TT

**Independent Connection/
OCCK**

Salina, KS
785/827-9383 Voice/TT

LINK, Inc.

Hays, KS
785/625-6942 Voice/TT

**Prairie Independent
Living Resource Center**

Hutchinson, KS
620/663-3989 Voice

**Resource Center for
Independent Living, Inc.**

Osage City, KS
785/528-3105 Voice
785/528-3106 TT

**Southeast Kansas
Independent Living, Inc.**

Parsons, KS
620/421-5502 Voice
620/421-6551 TT

The Whole Person, Inc.

Kansas City, MO
816/561-0304 Voice
816/627-2201 TT

Three Rivers ILC

Wamego, KS
785/456-9915 Voice

Madam Chairman and members of the committee, thank you for taking our testimony. My name is Rosie Cooper, the Executive Director of the Kansas Association of Centers for Independent Living. To update the committee on issues presented previously. The timeliness of Authorizations and the timeliness of reimbursement payments continue to improve.

Unfortunately, that is the end of the good news. The HCBS PD waiting list has so many conflicting reports that KACIL is asking you as a committee to seek clarity and evidence on:

1. Reports are, the waiting list is around 2,000 people however last week an individual, who asked to remain anonymous, inquired with ADRC as to their position on the list. They were told a number above 2,700. That is a significant discrepancy.
2. Reports are, people with mental illness are being denied access to assessment, being removed from the waiver at the annual assessment stage, and it is rumored being removed from the waiting list.
 - At intake, an individual admitting to having a mental illness is immediately referred to Community Mental Health Center. Access denied according to law? Let's check.
 - HCBS as defined by K.A.R. 3-5-500: (27) "Medicaid home- and community-based services (HCBS)" means services provided in accordance with a federally approved waiver to the Kansas medicaid state plan that are designed to prevent unnecessary utilization of services and to reduce health care-related costs. *Any individual who has a **primary diagnosis of mental illness** and who is 21 years of age or older, but less than 65 years old, shall not be eligible.*
 - Primary Diagnosis as defined in K.A.R. 30-5-58: (qqqq) "Primary diagnosis" means the **most significant diagnosis related to the services rendered.**
 - Meet Ann, who has a mental illness. She was on the WORK Program and the PD Waiver prior to residing in a state mental health hospital for several months. She is ready to leave. Due to current interpretations, Money Follows the Person, PD waiver and WORK are no longer an option. Ann also has Cerebral Palsy, Seizure Disorder, needs assistance to get out of bed, take a shower, dressing and the list continues. So what is her most significant diagnosis?
 - We are dealing with people who have complex issues and who need access to an assessment that will determine the most significant diagnosis.

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3. Reports are, people with physical disabilities who do not have a Social Security determination are being denied access to assessment, denied access to Presumptive Eligibility Determinations and individuals who receive PD waiver services with a Presumptive Determination will and are being removed when their SSA claim is denied even if they file an appeal.
 - Numerous KACIL member CILS report individuals being referred to SSA first and told to come back when they have a paper proving SSA determination. In the Kansas 1915c there is nothing that states determination precedes assessment.
 - **1915c Amendment: KS.0304.R03.03 effective January 1, 2013:** To be eligible for HCBS-PD waiver services, consumers must (a) be between the minimum age of 16 years and the maximum age of 64 years; (b) meet the Medicaid long term care threshold; (c) be disabled according to Social Security Disability Standards; and (d) be determined functionally eligible for PD waiver services according to the PD Uniform Assessment Instrument and threshold guide level of care score (K.A.R. 30-5-305; K.A.R. 30-5-309.) Entry into the waiver is based on a first-come, first-served basis for applicants determined eligible. In the event there is a waiting list, entry is based on the time and date the assessment is completed. Responsibility for managing the waiting list remains with the State (KDHE and KDADS).
 - Ask, why are we stopping the concurrent process? Historically, assessments and Presumptive Eligibility Determinations were helpful in obtaining a Social Security Determination.
 - In addition, notice above it does not state SSA Determination rather it says "disabled according to Social Security Disability Standards. The Kansas Economic and Employment Services Manual that was revised in November of this year states:
 - **2663 Presumptive Medicaid Disability (PMD)** - Medical assistance under the Medicaid program is available to persons who meet Social Security disability criteria as determined by the PMDT and DRT.
 - **2663.2 Eligibility Requirements** - Presumptive Medicaid Disability is available under any medical assistance program which requires the individual to be determined disabled. All existing general, financial and non-financial rules for the program involved are applicable: **Working Healthy** - see 2664, **Nursing Facility/Institutional** - see 8100, **Home and Community Based Services** - see 8200, **Medically Needy/Spenddown** - see 7532, **SSI-Related** - see 2663.3.
 - Clearly the scope of the Waiver and EES manual demonstrate the narrowing of access to the assessment phase is unwarranted.
 - Recently KACIL was told Presumptive would not be used for anyone in the appeal status with SSA. Further research shows that is not necessarily correct:
 - **2663.4 Precedence of the Social Security Disability Determination** - A final determination made by Social Security takes precedence over a decision by the PMD (see 2663.6).
 - **2663.6 Final Determination By SSA** - A final determination of disability by Social Security is reached when the individual is approved for benefits or is not found to meet disability criteria by Social Security and has no further administrative appeal rights

KACIL wants to stress that our testimony is a mixture of facts and second hand information; but when put together it tells a story demonstrating denying waiver access from beginning to end. We are asking this committee to use your powers of oversight to find the real facts. We are also asking our partners, KDADS and KDHE, to examine this story and see if it matches their true intent of KanCare: improving health care access for Kansans.

112